

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION**

ESTATE OF RASHAD CUNNINGHAM,)
Deceased, by TONIA SIMMONS,)
Independent Administrator, and)
DAVID NUSZ,)
Plaintiffs,)
vs.) No.
CITY OF GARY and)
ISAIAH PRICE,)
Defendants.) JURY TRIAL DEMANDED

COMPLAINT

Tonia Simmons, as Independent Administrator of the Estate of Rashad Cunningham and David Nusz, by and through their attorneys, Andrew M. Stroth, Carlton Odim and Amanda S. Yarusso of Action Injury Law Group LLC, and Gregory Kulis of Gregory E. Kulis & Associates, Ltd., complain of Defendants, City of Gary, Indiana, and Gary Police Officer Isaiah Price, as follows:

Introduction

1. This is a civil rights action. On August 17, 2019, Rashad Cunningham, a 25-year-old Black man, lost his life. Without lawful justification, Gary Police Officer Isaiah Price shot and killed Rashad.
2. At the time of the shooting, Rashad Cunningham presented no immediate threat to Defendant Officer Price, or anyone else.

Jurisdiction and Venue

3. The Jurisdiction of the court is invoked pursuant to the Civil Rights Act, 42 U.S.C. §

1983 et seq.; the Judicial Code, §§ 1331 and 1343(a); and the Constitution of the United States and supplemental jurisdiction of the State of Indiana. Venue is proper in this District under 28 U.S.C. § 1391(b). The parties reside, or, at the time the events took place, resided in this judicial district, and the events giving rise to Plaintiff's claims also occurred in this judicial district.

Parties

4. Tonia Simmons was appointed Independent Administrator of the Estate of Rashad Cunningham, deceased, by Civil Division 2 of the Lake Superior Court of Lake County, Indiana.

5. Tonia Simmons is a resident of Lake County, Indiana, and was the mother of Rashad Cunningham.

6. Rashad Cunningham was survived by next of kin, Tonia Simmons (mother), Jesse Cunningham (father), and five (5) minor children.

7. David Nusz is a resident of Lake County, Indiana and was a passenger in the car with Rashad Cunningham on August 17, 2019.

8. Defendant Officer Isaiah Price was, at all times relevant to the allegations made in this complaint, a duly appointed police officer employed by the City of Gary, Indiana, acting within the scope of his employment with the City of Gary and under color of state law. He is sued in his individual capacity.

9. Defendant City of Gary, Indiana, is a municipality duly incorporated under the laws of the State of Indiana and is the employer and principal of Defendant Price and the other Gary police officers referred to in this Complaint. The City is responsible for the policies, practices and customs related to its maintenance of a police force.

Facts

10. On August 17, 2019, at approximately 3:15 am Rashad Cunningham was parked in a

Black Chevy Tahoe in front of his home, at or near East 23rd Avenue and Kentucky Street in Gary, Indiana.

11. Defendant Price and his partner approached the vehicle, with their flashlights and weapons drawn and pointed at Rashad, in the front passenger seat, and the two other occupants of the vehicle.

12. Without cause or provocation and within approximately ten (10) seconds from exiting the car, Defendant Price fired his gun at Rashad, fatally killing him.

13. At the time of the shooting, Rashad was holding his wallet and driver's license in his hands.

14. At the time Defendant Price fatally shot Rashad, Rashad, David and the other passenger in the car were not engaged in any criminal conduct or the violation of any law.

15. At the time Defendant Price fatally shot Rashad, Rashad nor any of the passengers in the vehicle had done anything to threaten Price or any other person.

16. Before Defendant Price fatally shot Rashad, Price had not issued any warnings to Rashad or the other passengers in the vehicle.

17. Defendant Price's partner was present and did nothing to intervene or prevent the fatal shooting of Rashad by Defendant Price.

18. Following the shooting, Price's partner, a Gary police officer, ordered David Nusz to the ground, stepped on David's head, put his gun in David's face, handcuffed David, and threatened David saying: "Shut the fuck up. I should've shot you in your fucking head, too."

19. At the time Price's partner used the force described above on David Nusz, David had not done anything to resist or threaten Price or his partner.

20. Defendant Price was present and did nothing to intervene or prevent his partner's use

of force against David.

21. David was taken into police custody and held for six (6) hours at the police station after witnessing the police murder his friend, Rashad Cunningham.

22. David was not advised that he was free to leave at any point while he was in police custody.

23. Prior to seizing David, no police officer had observed David commit any criminal act or act in violation of the law.

24. At no time prior to or during the time David was held in police custody, did any police officer have probable cause to believe David had committed or was committing a crime or violating any law.

25. At no time prior to or during the time David was held in police custody, did any police officer have reasonable suspicion that David had committed or was committing a crime or violating any law.

**Count 1
42 U.S.C. § 1983 Claim for Unconstitutional Seizure**

26. Plaintiff Tonia Simmons repeats and realleges the preceding paragraphs of this Complaint, as if they were fully set out in this Count.

27. The actions of the Defendant Price in shooting Rashad Cunningham without just cause constituted the use of excessive force in violation of Rashad Cunningham's rights under the Fourth Amendment to the United States Constitution to be secure in his person against unreasonable seizure, and his right to due process under the Fourteenth Amendment to the United States Constitution, and caused the injuries alleged in this Complaint.

WHEREFORE, pursuant to 42 U.S.C. §1983, Plaintiff Tonia Simmons demands

judgment against Defendant Price for compensatory damages, punitive damages, plus the costs of this action, attorney's fees and whatever additional relief this Court deems equitable and just.

**Count 2
State Law Wrongful Death Claim**

28. Plaintiff Tonia Simmons repeats and realleges the preceding paragraphs of this Complaint, as if they were fully set out in this Count.

29. As a direct and proximate result of the foregoing willful and wanton acts of Defendant Price and the City of Gary, Rashad Cunningham died on August 17, 2019.

30. Plaintiff, Tonia Simmons, Independent Administrator of the Estate of Rashad Cunningham, deceased, brings this action in her capacity as Independent Administrator on behalf of the beneficiaries of the Estate of Rashad Cunningham, all of whom have suffered and will continue to suffer pecuniary loss, emotional distress, and loss of love and companionship as a result of the death of Rashad Cunningham.

WHEREFORE, the Plaintiff, Tonia Simmons, Independent Administrator of the Estate of Rashad Cunningham, demands judgment against the Defendant Isaiah Price for compensatory and punitive damages, plus costs and any and all other relief that this Court deems just, fair, necessary and proper.

**Count 3
42 U.S.C. § 1983 Claim for Unconstitutional Seizure / David Nusz**

31. Plaintiff David Nusz repeats and realleges the preceding paragraphs of this Complaint, as if they were fully set out in this Count.

32. The actions of Price's partner, a Gary police officer, in stepping on David's head, putting a gun in his face, and threatening to fatally shoot David, without just cause constituted the use of excessive force in violation of David's rights under the Fourth Amendment to the

United States Constitution to be secure in his person against unreasonable seizure, and his right to due process under the Fourteenth Amendment to the United States Constitution, and caused the injuries alleged in this Complaint.

WHEREFORE, pursuant to 42 U.S.C. §1983, Plaintiff David Nusz demands judgment against the unnamed Gary police officer, Price's partner, for compensatory and punitive damages, plus the costs of this action, attorney's fees and whatever additional relief this Court deems equitable and just.

**Count 4
42 U.S.C. § 1983 Claim for Unconstitutional Seizure / David Nusz**

33. Plaintiff David Nusz repeats and realleges the preceding paragraphs of this Complaint, as if they were fully set out in this Count.

34. The actions of Price, his partner and any other involved Gary police officer, in seizing David, handcuffing David, taking David into police custody and holding him for six (6) hours, without probable cause or other legal justification constituted an unreasonable seizure and detention in violation of David's rights under the Fourth Amendment to the United States Constitution to be secure in his person against unreasonable seizure, and his right to due process under the Fourteenth Amendment to the United States Constitution, and caused the injuries alleged in this Complaint.

WHEREFORE, pursuant to 42 U.S.C. §1983, Plaintiff David Nusz demands judgment against Price and any and all other Gary police officers involved, for compensatory and punitive damages, plus the costs of this action, attorney's fees and whatever additional relief this Court deems equitable and just.

**Count 5
State Law Claim for Respondeat Superior Against Defendant City of Gary**

35. Plaintiffs repeat and reallege the preceding paragraphs of this Complaint, as if they were fully set out in this Count.

36. Defendant Officer Isaiah Price, his partner and any other Gary police officer involved in the incident resulting in the fatal shooting of Rashad Cunningham and unlawfully seizing, detaining and using excessive force against David Nusz were, at all times material to the allegations made in this complaint, employees and agents of Defendant City of Gary acting within the scope of their employment. Defendant City of Gary is liable for the acts of Defendant Price, his partner and any other Gary police officer under the doctrine of respondeat superior.

WHEREFORE, Plaintiffs demand judgment for damages, jointly and severally from Defendant Price and Defendant City of Gary for any state law claims, plus the costs of this action and whatever additional relief this Court deems equitable and just.

**Count 6
Indemnification Claim Against Defendant City of Gary**

37. Plaintiffs repeat and reallege the preceding paragraphs of this complaint, as if they were fully set out in this Count.

38. Defendant City of Gary was the employer of Defendant Price, his partner and any other Gary police officer involved in the fatal shooting of Rashad Cunningham and unlawfully seizing, detaining and using excessive force against David Nusz at all times relevant to the allegations contained in this complaint.

39. Defendant Price, his partner and any other Gary police officer involved in the events described in this Complaint committed the acts alleged in this complaint in the scope of their employment with the City of Gary.

40. Defendant City of Gary should indemnify Defendant Price, his partner and any other

Gary police officer involved in the events described in this Complaint pursuant to Indiana law providing for the indemnification of a public entity's employees.

WHEREFORE, Plaintiff demands judgment against Defendant City of Gary in the amount awarded to Plaintiffs as damages, attorney's fees, costs and interest, and/or for any settlement entered into between Plaintiffs and Defendants, and for whatever additional relief this Court deems equitable and just.

Respectfully submitted,

/s/ Gregory Kulis

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